THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.8983 OF 2003

O R D E R

Heard both the counsel.

2. The writ petition is filed for a writ of Mandamus declaring the action of the respondents in appointing Managing Committee to Sri Markandeya Swamy Temple, as arbitrary illegal and violative of Articles 14, 16 and 19 of the Constitution of India.

3. The case of the petitioner who is the President of the Padmasali Seva Samajam, Siddipet, Medak District (for short 'the Samajam') in the affidavit filed in support of the writ petition is that the said Samajam was registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1360 Fasli (Act No.1 1350 Fasli). The Kula Daivam of Padmasli Community is "Markandeya Swamy Varu" and "Kanyaka Parameswari". From out of the contributions made by the members of the Samajam, and Sri Markandeya Swami Temple was constructed and also from the contributions "Nitya dhoopa Deepa Naivedyam" is being offered and other rituals are being performed in the temple. No other community people offer pooja or pay any visits to the temple. The further case of the petitioner is that the Samajam is exclusively looking after the affairs of the temple and it has

no independent income and the Samajam is making improvements with regard to the buildings of the Samajam and it is purely a denominational temple. In the year 1992 the Assistant Commissioner of Endowments issued a notice proposing to appoint trustees and pursuant to the same the Samajam made representations, but thereafter nothing was heard from the department. The grievance of the petitioner is that the 3rd respondent issued proceedings No.B/1840/2002, dated 4-7-2002 declaring that the term of existing trustees has been expired and the department wants to appoint the new committee under Section 15(3) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). Hence, the writ petition.

4. The learned counsel appearing for the petitioner contended that without issuing any publication under Section 6 (c) (ii) of the Act, the proceeding dated 4.7.2002 has been issued by the 3rd respondent – Assistant Commissioner of Endowments and the same is illegal and arbitrary.

5. The respondents filed a detailed counter and stated that Sri Markandeya Swamy Temple, is published under Section 6©(ii) of the Act. Along with the counter the respondents also enclosed a lcopy of list of institutions for publication under Section 6(c) (ii) of the Act and Sri

Markandeya Swamy Temple is figuring at Sr.No.1234. In the counter it is stated that only Samajam to which the petitioner is the President is registered and not the temple. It is also stated that the temple is constructed by raising the donations from the devotees of Lord Markandeya and not exclusively from the funds of Padmashali Community and that the institution is deriving income from four shops and from a Kalyana Mandapam in the premises of the temple and the said income is being utilized for the purpose of Nitya Dhoopa Deepa Naivedyam and that there is no specific order from the competent authority declaring the said temple as denominated temple. In the year 1992 a notification was issued for constitution of the non-hereditary trust board, but the trust board could not be constituted. A notification has been issued by the Assistant Commissioner, Endowments Department, Medak for constitution of trust board under Section 15(3) of the Act and the said notice has been affixed on the main door of the temple and also on the notice board of the Siddipet Municipality and other places. With these averments, the writ petition was sought to be dismissed.

6. From the above, the main case of the petitioners is that Sri Markandeya Swamy Temple, is the denominational temple of the Padmashali Samajam as the said temple was constructed from out of the donations and contributions from the members of the Samajam and

the said samajam is looking after the affairs of the temple from out of its income and the temple has no independent income. The other grievance of the petitioner is that without publishing the temple under Section 6 (c) (ii) of the Act, notices under Section 15(3) of the Act have been issuing inviting applications from the eligible people for appointing them as trustees and the same is illegal. The learned counsel for the petitioner submitted that the list of institutions enclosed to the counter are the temples proposed for publication under Section 6 (c) (ii) and they are not published.

7. In the counter affidavit filed by the respondents it is categorically stated that the temple has been published under Section 6 (c) (ii) of the Act. In view of this statement, the grievance of the petitioner and the contention of the counsel for the petitioner that the list enclosed to the counter are the institutions proposed to be published under Section 6(c) (ii) of the Act, cannot be countenanced. When the notice under Section 15(3) of the Act has been issued, the process shall have to go on and it cannot be staled. In the counter affidavit the respondents also contended that only Samajam is registered and not the temple and further they also disputed that the temple is constructed only from out of the funds of the Padmashali Community and contended that the temple is constructed from out of the donations

from the devotees of Lord Markandeya and that the institution is deriving income from four shops and also from a Kalyana Mandapam in the premises of the temple and the said income is being utilized for the purpose of Nitya Dhoopa Deepa Naivedyam and that there is no specific order declaring the temple as denominational temple. These being disputed questions, cannot be adjudicated under the writ jurisdiction. Further, under Section 87 of the Act, the Deputy Commissioner of Endowments is the competent authority to adjudicate all the disputes raised by the petitioner. Instead of approaching the authority under Section 87 of the Act, the petitioner filed writ petition under Article 226 of the Constitution of India.

8. In view of the above facts and circumstances and having regard to the submissions made by the respective counsels I do not find any illegality on the part of the respondents in issuing notices under Section 15(3) of the Act for appointment of Board of Trustees, since as per the statement in the counter affidavit Sri Markandeya Swamy Temple, has been published under Section 6 (c) (ii) of the Act. However, the petitioner is always at liberty to approach the Deputy Commissioner under Section 87 for adjudicating the claim of Samajam within a period of four weeks from the date of receipt of a copy of this order and thereupon the Deputy Commissioner shall adjudicate

the same in accordance with law after giving opportunity and pass appropriate orders within a period of four weeks.

9. With the above observation, the writ petition is dismissed. No costs.

AVS

26—07—2006